TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 19[illegible]

No. 616 [illegible]

MAX PUTNAM AND ELIZABETH PUTNAM,
PETITIONERS,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE [illegible] CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 8, 1945

CERTIORARI GRANTED FEBRUARY 26, 1945

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 610

MAX PUTNAM AND ELIZABETH PUTNAM,
PETITIONERS,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 18, 1956

—9158-7

[fol. 1] **IN THE TAX COURT OF THE UNITED STATES**

PETITION—Filed April 4, 1952

The above named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated January 9, 1952, and as a basis of their proceeding allege as follows:

1. The petitioners are individuals with residence at 434—28th Street, Des Moines, Iowa. The return for the period here involved was filed with the Collector for the District of Iowa.

2. The notice of deficiency, a copy of which is attached and marked Exhibit "A," was mailed to petitioners on January 9, 1952.

3. The deficiencies as determined by the Commissioner are in income taxes for the calendar year 1947 in the amount of $1,411.16, of which approximately $1,411.16 is in dispute; and for the calendar year 1948 in the amount of $2,121.56 of which approximately $2,000.00 is in dispute.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

Error I.

The Commissioner erred in holding that the losses claimed on the return in the amount of $8,492.32 for the taxable year ending December 31, 1947, arising from the worthlessness of notes due Max Putnam by Meredith Case and Leo Quinn, constitute non-business bad debts deductible only as short-term capital losses under section 23 (K) (4) of the Internal Revenue Code.

[fol. 2] Error II.

The Commissioner erred in holding that the loss claimed on the return in the amount of $9,055.21 for the taxable year ending December 31, 1948, arising from payments of principal and interest as guarantor of notes signed by the Whitehouse Publishing Company, constitutes a non-business bad debt deductible only as a short-term capital loss under section 23 (k) (4) of the Internal Revenue Code.

5. The facts upon which the petitioners rely as the basis of this proceeding are as follows:

A. The petitioner Max Putnam is a lawyer, and Elizabeth Putnam is his wife, both residing in Des Moines, Iowa.

B. In the summer of 1946, one of the petitioners, Max Putnam, hereinafter referred to as the taxpayer, represented on a retainer fee a labor union in Des Moines, and through legal labor counselling had become attorney for Leo Quinn, a former business agent of another union, Teamsters Local 90, and Meredith Case, the editor of a labor weekly newspaper. The labor union represented on retainer by taxpayer, Division 441 of the Street Car Men's Union, composed of approximately seven hundred members, was a large subscriber to the weekly newspaper which was known as the Des Moines Federationist.

C. Leo Quinn had started the newspaper and Meredith Case controlled it, and had advertising therefor. They undertook to go into the printing and publishing business with the taxpayer, who put up the money, while they were to get the business and do the work. They persuaded taxpayer that the business would be profitable in itself and would be a valuable asset to his law practice, especially as it would correlate with his legal labor work.

D. A partnership was agreed to at the outset, taxpayer advancing monies to purchase a lot in West Des Moines, Iowa, which is adjacent to Des Moines, Iowa, and taxpayer's residence and legal practice area. A small build-
[fol. 3] ing was erected upon said lot at taxpayer's expense in the summer of 1946.

E. The name of the Whitehouse Publishing Company was adopted for the business; a bank account opened under that name with money supplied by the taxpayer, and then Articles of Incorporation were filed in that name August 17, 1946.

F. The purchase of printing equipment was required and the Central National Bank & Trust Company turned down a loan of money on chattel mortgage, either to Quinn or to Case, or to the corporation, or to all three.

G. The contractor who built the building had required the construction contract to be signed by taxpayer personally.

H. Materials and supplies, including paper, newsprint, and metal, had to be obtained on credit which suppliers refused to extend to Quinn or Case or the corporation, or all three.

I. Taxpayer then personally signed a written guarantee to the Newhouse Paper Company in Des Moines, Iowa, for all supplies ordered by Meredith Case, and a written personal guarantee to an association of printing suppliers represented by a Des Moines attorney, Don Neiman, taxpayer personally guaranteeing all suppliers represented by said association. Taxpayer also personally signed and guaranteed a note for $11,000.00 with the Central National Bank & Trust Company on the strength of which credit was granted. That note was paid down and more borrowed on taxpayer's guaranty, ending up in the amount of $9,055.21 which was paid in 1948. All of these obligations were personally assumed by taxpayer in the summer and fall of 1946, both before and after the Articles of Incorporation were filed.

J. Printers were employed on the personal promise of taxpayer that he would pay the salaries if the business didn't, and all printers and employees were union men [fol. 4] belonging to unions who subscribed to the newspaper called The Des Moines Federationist, the name of which was changed to the Iowa Federationist.

K. Case and Quinn were salaried employees, with social security and withholding tax deductions, and so also were all others who worked for the Whitehouse Publishing Company. Taxpayer at no time had a salary or received any income whatsoever from said business.

L. Only $1,500.00 in par value of stock was issued by the corporation. However, more than $9,000.00 in cash of taxpayer was required merely to get the enterprise started; therefore there was no relationship between the stock holdings and monies advanced. The business was contracted for in advance of any stock issue.

M. Leo Quinn and Meredith Case had no monies invested in the enterprise. Each was sold five shares of stock having a par value of $100.00 per share by the execution of a note to the taxpayer, who took an assignment of all of said stock as collateral for the loan. Taxpayer had voting power under an agreement that the two

men were not to get control or ownership of the stock until they repaid their obligations to taxpayer. Both referenced individuals in 1946 signed other notes aggregating $8,492.52, which sums represented a portion of the cash money which taxpayer had put into the business.

N. Taxpayer advanced additional cash each month for all operating expenses. The payroll expense alone averaged more than $2,000.00 per month; all of which was underwritten by taxpayer. To aid in paying bills and payroll Clyde Putnam, Jr., brother of taxpayer, loaned $3,500.00 of the Whitehouse Publishing Company. Five shares of treasury stock were issued to him, the said taxpayer's brother, which represented one-fourth of the outstanding stock. Taxpayer guaranteed this loan also.

O. Each month the expenditures increased until the taxpayer asserted his complete legal control. He discharged Case in February of 1947 and Quinn in June [fol. 5] of 1947. By written instruments executed by Case and Quinn, taxpayer obtained from both of them, release of any claims against or interest in the enterprise. Taxpayer cancelled their notes because both men were judgment proof. Taxpayer then had the corporation acknowledge the obligation to him in equivalent amounts.

P. Within the same year, 1947, the physical assets were sold, including the labor newspaper, and the proceeds of sale were applied to reduce the debts. One remaining asset, a claim against the Breeders Register, was made the basis of a lawsuit, which was dismissed in March, 1948.

Q. The issued shares of stock had been held at all times by taxpayer and pledged as collateral to the bank for loans guaranteed by taxpayer. The bank at all times relied solely upon the taxpayer's signature and reputation for repayment. In 1948 the bank loan was paid in full by taxpayer in the amount of $9,005.21. When said notes were paid the entire printing and publishing business had expired.

R. At all times, from June, 1946, through March, 1948, taxpayer was personally engaged in the said printing and publishing business. Taxpayer spent more time and effort on said printing and publishing business, and the management thereof during 1947, than he did in trying

lawsuits or dealing with clients. As a result the major burden of the legal practice was carried by taxpayer's law partners, Clyde Putnam, Jr. and C. C. Putnam, Sr.

S. Taxpayer entered the said printing business under the assumption that it would be a valuable adjunct to his law practice by and through the connection with the labor movement. After taxpayer was obligated, then, in order to protect his reputation, his relationship to clients, and his personal credit, he had to make good upon all said underwritten obligations, thereby suffering personal losses in 1947 and 1948 of more than the amounts in dispute. The personal involvement of taxpayer in both his law practice and the printing enterprise was complete, such that taxpayer could not afford as a lawyer, to permit the printing business to go into bankruptcy, and could [fol. 6] not avoid the payment of all obligations of the printing business without taking personal bankruptcy.

T. At no time did taxpayer rely upon or enjoy any of the advantages of corporate immunity. At all times insofar as the corporation was involved at all, it was the alter ego and agent of taxpayer. Taxpayer personally conducted the business in all respects and his losses were solely the result of that fact. The business was not conducted by the corporation. The petitioner from the beginning did not elect to conduct the business through the medium of the corporation.

U. Taxpayer attempted to operate this printing business through Case and Quinn. The notes taken from them and the corporation were devices whereby taxpayer attempted to build a printing and publishing business on the efforts of Case and Quinn and on taxpayer's money.

V. Any error in the expression or classification of the deductions which were claimed as bad debts on taxpayer's returns in 1947 and 1948 were the result of taxpayer relying upon others, instead of schooling himself in the regulations and tax law. At all times the facts have been the same, regardless of any misapplied tax terminology in the expression thereof.

W. The loss of $8,492.33 in dispute for the year ending December 31, 1947, was determined to be, and was, final and irrevocable in 1947; and the loss of $9,006.21 in dis-

pute for the year ending December 31, 1948, was determined to be, and was, final and irrevocable in 1948.

X. The losses in dispute were occasioned by the taxpayer not only making the loans and borrowing the money as aforesaid, but also by the taxpayer making more advances and borrowing more money in the personal conduct of a printing and publishing business as a separate personal business, in addition to and as an adjunct of his law practice.

Wherefore, the petitioners pray that this Court may hear the proceeding and allow the deductions claimed by [fol. 7] petitioners for the taxable years ending December 31, 1947 and December 31, 1948, and sustain the assignments of error hereinabove set out.

Max Putnam, Elizabeth Putnam, 434 28th Street, Des Moines, Iowa.

EXHIBIT "A" TO PETITION

Form 1230-A (1951)

U. S. Treasury Department
Office of Internal Revenue Agent in Charge
Omaha 2, Nebraska

Internal Revenue Service
600 Farm Credit Bldg.

January 9, 1952.

Mr. Max and Mrs. Elizabeth Putnam
434—28th Street
Des Moines, Iowa

Dear Mr. and Mrs. Putnam:

You are advised that the determination of your income tax liability for the taxable year(s) December 31, 1947, and 1948, discloses a deficiency of $3,532.72 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given to the deficiency or deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with the Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia, in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

[fol. 8] Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to this office for the attention of Conf: 90-D. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours, John B. Dunlap, Commissioner,
By Arthur J. Berliner, Internal Revenue Agent in Charge.

Enclosures: Statement, Form 1276, Agreement form 870.

STATEMENT

Mr. Max Putnam and
Mrs. Elizabeth Putnam
Husband and Wife
434—28th Street
Des Moines, Iowa

Tax Liability for the Taxable Years
Ended December 31, 1947 and
December 31, 1948

Income Tax

Year Ended—	Liability	Assessed	Deficiency
December 31, 1947	$1,411.16	None	$1,411.16
December 31, 1948	3,487.80	$1,366.24	2,121.56
		Total	$3,532.72

[fol. 9] In making this determination of your income tax liability, careful consideration has been given to the reports of examination dated August 3, 1950, and February 19, 1951; to your protests dated November 3, 1950, and April 20, 1951; and to the statements made at the conferences held in the office of the Internal Revenue Agent in Charge, Des Moines, Iowa, on March 2, 1951, and on June 7, 1951, and at the conference held in the office of the Western District of the Appellate Staff, Omaha, Nebraska, on September 25, 1951.

Adjustment to Net Income

Taxable Year Ended December 31, 1957

Net income as disclosed by return	$ 425.78
Unallowable deductions and additional income:	
(a) Bad Debts	7,492.32
Net income as adjusted	$7,918.10

Explanation of Adjustments

(a) It is held that losses claimed on your return in the total amount of $8,492.32 arising from the worthlessness of notes due you by Meredith Case and Leo Quinn constitute nonbusiness bad debts deductible only as short-term capital losses under section 23(k)-(4) of the Internal Revenue Code.

Computation of Tax

Taxable Year Ended December 31, 1947

Net income as corrected	$7,918.10
Less: Exemptions (3)	1,500.00
Balance	$6,418.10
Tentative tax on $6,418.10	$1,485.43
Less: Tax reduction at 5% of $1,485.43	74.27
Total income tax liability	$1,411.16
[fol. 10] Income tax assessed:	
Original Account No. 9150352	None
Deficiency in income tax	$1,411.16

Adjustments to Net Income

Taxable Year Ended December 31, 1948

Net income as disclosed by return	$ 9,427.81
Unallowable deductions and additional income:	
(b) Bad debts	7,830.21
(c) Rental expenses	484.08
(d) Income from annuity	319.26
Net income as corrected	$18,061.36

Explanation of Adjustments

(b) It is held that the loss claimed on your return in the amount of $9,005.21, arising from the payments of principal and interest as guarantor of notes signed by the Whitehouse Publishing Company, constitutes a nonbusiness bad debt deductible only as a short-term capital loss under section 23(k)(4) of the Internal Revenue Code.

(c) It is determined that your share of the deductible rental expenses attributable to your joint ownership of the O'Malley Apartments (owned jointly with Mr. Karl Burns) is $376.76 instead of $860.84 shown on your return. The difference of $484.08 is restored to your taxable income.

(d) It is held that your income from annuity is taxable income to the extent of 3% of the cost of such annuity. The cost of the annuity was $18,127.00 so that $543.81 (3% of $18,127.00) of the $894.00 you received in 1948 is included in your taxable income by this adjustment.

[fol. 11] Taxable portion of annuity	$543.81
Reported on your return	224.55
Adjustment for difference	$319.26

Computation of Tax

Taxable Year Ended December 31, 1948

Net income as corrected		$18,061.36
Less: Exemptions (3)		1,800.00
Balance		$16,261.36
Joint Return Filed		
One-half of above balance	$8,130.68	
Tentative tax on $8,130.68		$2,004.43
Less: Tax Reduction:		
$ 400.00 at 17%	68.00	
1,604.43 at 12%	192.53	260.53
Tax on one-half of income		$1,743.90
Total income tax liability (1.743.90 multiplied by two)		3.487.80
Income tax assessed:		
Original Account No. 3027841		1,366.24
Deficiency in income tax		$2,121.56

IN THE TAX COURT OF THE UNITED STATES

ANSWER—Filed May 27, 1952

Comes now the Commissioner of Internal Revenue, by his attorney, Charles W. Davis, Chief Counsel, Bureau of [fol. 12] Internal Revenue, and for answer to the petition filed in the above-entitled proceeding, admits and denies as follows:

1. Admits the allegations of paragraph 1.
2. Admits the allegations of paragraph 2.
3. Admits the allegations of paragraph 3.
4. Error I. Denies the allegations of error of paragraph 4 Error I.

Error II. Denies the allegations of error of paragraph 4 Error II.

5. A. Admits the allegations of paragraph 5 A.
B. Denies the allegations of paragraph 5 B.
C. Denies the allegations of paragraph 5 C.
D. Denies the allegations of paragraph 5 D.
E. Denies the allegations of paragraph 5 E.
F. Denies the allegations of paragraph 5 F.
G. Denies the allegations of paragraph 5 G.
H. Denies the allegations of paragraph 5 H.
I. Denies the allegations of paragraph 5 I.
J. Denies the allegations of paragraph 5 J.
K. Denies the allegations of paragraph 5 K.
L. Denies the allegations of paragraph 5 L.
M. Denies the allegations of paragraph 5 M.
N. Denies the allegations of paragraph 5 N.
O. Denies the allegations of paragraph 5 O.
P. Denies the allegations of paragraph 5 P.
Q. Denies the allegations of paragraph 5 Q.
R. Denies the allegations of paragraph 5 R.
S. Denies the allegations of paragraph 5 S.
T. Denies the allegations of paragraph 5 T.
U. Denies the allegations of paragraph 5 U.

[fol. 13] V. Denies the allegations of paragraph 5 V.
W. Denies the allegations of paragraph 5 W.
X. Denies the allegations of paragraph 5 X.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore expressly admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved.

Charles W. Davis, GWR, Chief Counsel, Bureau of Internal Revenue.

Of Counsel: Gene W. Reardon, District Counsel; Melvin A. Bruck, Special Attorney, Bureau of Internal Revenue.

IN THE TAX COURT OF THE UNITED STATES

AMENDMENT TO PETITION—Filed September 23, 1953

The above named Petitioners hereby amend the original Petition herein by adding thereto the following:

6. The Petitioner, Max Putnam, has been engaged in the general practice of law at Des Moines, Iowa, since June 10, 1931. In the course of his practice of law, it was his practice and custom to make investments in various business enterprises from time to time for the purpose of solidifying his relationships with clients engaged in such business [fol. 14] enterprises and for the purpose of encouraging new clients to employ him as their counsel.

7. Petitioner, Max Putnam, loaned money to and advanced funds for the benefit of Leo Quinn and Meredith Case for the purpose, among others, of improving and solidifying his relations with organized labor and with labor unions in the hope and belief that the participation of said Case and Quinn in Whitehouse Publishing Company and Petitioners' loaning of funds to said Case and Quinn would develop relationships with them that would be productive of law business.

8. The original suggestion for the printing enterprise ultimately carried out by Whitehouse Publishing Company was made to Petitioner, Max Putnam, by the business agent for Local 441, previously referred to in the Petition.

9. Petitioner, Max Putnam, acted as guarantor for Whitehouse Publishing Company on its notes to Central National Bank & Trust Company of Des Moines, Iowa, as described in Paragraph 9 of the Petition, for the purpose, among others, of maintaining and improving his relationship as an attorney with organized labor and labor unions, including said Local 441, and for the additional purpose of developing said Whitehouse Publishing Company into a client productive of law business for the Petitioner as general counsel of Whitehouse Publishing Company.

10. The bad debt loss suffered by Petitioner, Max Putnam, on the debt arising from his loaning of funds and his advancement of funds for and to Leo Quinn and Meredith Case arose out of and in connection with said Petitioner's business activity in the general practice of law.

11. The bad debt loss of Petitioner, Max Putnam, in connection with his personal guarantee of the notes of Whitehouse Publishing Company to the Central National Bank & Trust Company, of Des Moines, Iowa, arose out of and [fol. 15] in connection with his business activity in the general practice of law.

Wherefore, the Petitioners pray that this Court allow the deductions claimed by the Petitioners for the taxable years ending December 31, 1947 and December 31, 1948, and sustain the assignments of error set forth in the original Petition herein.

Max Putnam, Elizabeth Putnam, 3819 Amick, Des Moines, Iowa.

IN THE TAX COURT OF THE UNITED STATES

ANSWER TO AMENDMENTS TO PETITION—Filed October 26, 1953

Comes now the Commissioner of Internal Revenue, by his attorney, Kenneth W. Gemmill, Acting Chief Counsel, Internal Revenue Service, and for answer to amendments to petition filed by the above-named petitioners admits and denies as follows:

1. Except that it admitted that the petitioner, Max Putnam, has been engaged in the general practice of law at Des Moines, Iowa since June 10, 1931, denies the allegations of paragraph 1 of the amendments to petition.

2. to 6., inclusive. Denies the allegations of paragraphs 2 through 6, inclusive, of the amendments to petition.

Denies generally and specifically each and every allegation contained in the petition, as amended, not hereinbefore admitted, qualified or denied.

[fol. 16] Wherefore, it is prayed that the determination of the Commissioner be approved.

Kenneth W. Gemmill, (T. A. S.), Kenneth W. Gemmill, Acting Chief Counsel, Internal Revenue Service.

Of Counsel: Frederick M. Seltzer, Acting Regional Counsel; Douglas L. Barnes, Acting Appellate Counsel; Thomas A. Steele, Jr., Acting Asst. Appellate Counsel; Merl B. Peek, Special Attorney; Internal Revenue Service, W-1681 1st Nat'l. Bank Bldg., St. Paul 1, Minnesota.

IN THE TAX COURT OF THE UNITED STATES

MEMORANDUM FINDINGS OF FACT AND OPINION—May 12, 1954
(Argued September 23, 1953)

TIETJENS, *Judge:* The respondent determined deficiencies in income tax against the petitioners of $1,411.16 for 1947 and $2,121.56 for 1948. The questions presented are whether valid debts were created as a result of loans made by the petitioner, and if so, whether the losses from the worthlessness of these debts were incurred in petitioner's trade or business. Certain other adjustments in peti- [fol. 17] tioners' net income for 1948 are not contested. The joint income tax returns of the petitioners, Max and Elizabeth Putnam, were filed with the collector of internal revenue for the district of Iowa.

FINDINGS OF FACT

The stipulated facts are so found, and the stipulation and the exhibits thereto are incorporated herein by this reference. The petitioners are husband and wife, and they reside in Des Moines, Iowa. Max Putnam, hereafter called petitioner, is a lawyer and has been continuously in the general practice of law in Des Moines since 1931. Between 1936 and 1941 petitioner was legal counsel to the Hawkeye Casualty Company, a large insurance corporation doing business in Iowa. He bought $19,000 worth of the company's capital stock, and in addition to acting as its legal counsel, petitioner became a director of the company and advised it in its financial affairs. In the 1930's he was a legal representative of the American Farmers Mutual Automobile Insurance Association. In the course of this association he made a loan of $4,000 in 1939 to the general secretary in charge of the company. In 1943 the petitioner loaned $350 to one of his clients,

an inventor, for the development of an invention by the client, and petitioner devoted a considerable amount of time to the promotion of the invention. Between 1951 and 1953 petitioner loaned $800 to a client for the organization of an ultra high frequency television company. He assisted in the organization of the Fortune Laboratories, Inc., an Iowa research and development corporation, and bought $2,350 worth of its stock and was named the corporation's secretary-treasurer. On two occasions in 1951 the petitioner loaned $5,000 to the Modern Lighting and Manufacturing Company, an Iowa corporation, for which he acted as legal counsel. Between 1942 and 1953 he was legal counsel to the Iowa Chiropractors Association. In addition to his legal work for the association petitioner participated generally in the association's activities, and on different occasions he loaned money or endorsed promissory notes for the association. Petitioner was solicited to buy a one-third interest in a pre-concrete [fol. 18] step manufacturing enterprise, but he did not make the purchase, although he subsequently bought stock in this company. Petitioner was legal counsel to the Wilbert Vault Company of Iowa and on one occasion he loaned money to the company's Texas branch.

In 1944 petitioner became legal counsel to Local 441 of a railway workers union in Des Moines and continued as its counsel until 1949. Through the union's business agent he met Meredith Case, editor of the Des Moines Federationist, a weekly newspaper published by the Iowa labor unions, and Leo Quinn, business manager of the Des Moines branch of the Teamsters Union, A. F. of L. With Quinn and Case petitioner formed the Whitehouse Publishing Company in 1946 for the purpose of carrying on a general printing and publishing business. The authorized capital stock of the corporation was 15 shares of a par value of $100 a share. Each of the organizers, petitioner, Quinn, and Case, received 5 shares of stock. As his contribution to the capital of the corporation, and on behalf of Case and Quinn, the petitioner transferred to the corporation a lot worth $1,000 and paid $5,500 to have a building constructed on the lot. The petitioner also made an initial contribution of $1,500 as working capital

for the corporation. He played a principal part in organizing the company and in carrying on its business, and personally guaranteed payment of all supplies purchased by Whitehouse and guaranteed payment of the salaries of the company's employees. On August 20, 1946, the petitioner and Whitehouse borrowed $12,075 from a bank for the use of the corporation and signed a promissory note for the amount as co-makers. Payments were made on this note and its principal reduced to $3,500 by July 30, 1947. In October of 1946, Quinn and Case made conditional transfers of their shares of stock to petitioner, title to the shares to be transferred to petitioner if they failed to meet the payments on any of their promissory notes to him. Quinn and Case contributed none of their own money to the capital of the corporation or to its operating expenses, since they had no funds other than [fol. 19] those necessary for their daily living expenses, but they gave the petitioner promissory notes for his contributions on their behalf. November 1, 1946, Quinn and Case each executed a promissory note to petitioner for $3,070.85, and on November 13, 1946, each executed a promissory note for $1,175.31. These four notes totalled $8,492.32, and represented for each of the makers an amount equal to one third of the cash and cost of real estate transferred by the petitioner to the Whitehouse Publishing Company on or before November 13, 1946. On November 13, 1946, petitioner borrowed $3,500 and made it available to the corporation. In February 1947 Case's notes to petitioner were cancelled and his stock in Whitehouse assigned to the petitioner. In lieu of Case's notes the petitioner was to receive promissory notes for the same amount from Whitehouse. In March, 1947, the petitioner and Whitehouse borrowed $5,000 from a bank and signed a promissory note for the amount as co-makers. In July, 1947, Quinn's notes to petitioner were cancelled and his stock in Whitehouse assigned to the petitioner. In lieu of Quinn's notes the petitioner was also to receive promissory notes for the same amount from Whitehouse. Neither Case nor Quinn was able to repay his debt to the petitioner. By the middle of 1947 it was evident that the publishing venture was unsuccessful. In July, 1947, Whitehouse's only substantial assets were its building

and equipment, and it was receiving some income from payments on purchase orders for a publication it had printed. At the same time it had a $13,500 indebtedness. In July, 1947, Whitehouse sold its building for $7,000 and ceased to do business. Of this amount $5,000 was used by the corporation toward paying off its promissory note of August 1946, and $2,000 went to petitioner to pay him for his advances to the corporation. In December, 1948, the petitioner paid the $3,500 indebtedness remaining on the August 20, 1946 promissory note, and at the same time he paid the $5,000 promissory note of March, 1947.

On his 1947 income tax return, filed jointly with his wife, the petitioner claimed as a business bad debt deduction $8,492.32, the total amount of the promissory notes given to him by Quinn and Case.

[fol. 20] On his 1948 income tax return, also filed jointly with his wife, the petitioner claimed a business bad debt deduction of $9,005.21, which consisted of the $8,500 paid by him on the promissory notes of August 20, 1948, and March, 1947, executed by him and Whitehouse as co-makers, together with the interest on these notes.

Opinion

In computing net income the Internal Revenue Code permits the deduction of bad debts that became worthless within the taxable year. Section 23 (k) (1). In the case of an individual taxpayer the amount of the deduction is made to depend on the manner in which the debt became worthless, or on whether the debt is evidenced by a security. If the worthlessness was incurred in the taxpayer's trade or business, the whole amount of the loss is deductible; if not incurred in the taxpayer's trade or business, the loss is treated as a short-term capital loss. Section 23 (k) (1) and (4).

The petitioner's argument is that the debts in question became worthless in his business, since the recipients of his loans were generally his clients, and he hoped by his loans to strengthen his business relationships with them and to contribute to the possibility of increased law business for himself. Alternatively, he suggests that the amounts in question be treated as ordinary and necessary

business expenses under section 23 (a) (1) (A) of the Code; or as losses incurred in business or in transactions entered into for profit, though not connected with business (Section 23 (e) (1) or (e) (2)). In opposition the respondent makes the following contentions: (a) the contributions to capital made by the petitioner on behalf of Quinn and Case did not create valid debts, because the petitioner could not have reasonably expected to be repaid since neither of these men had any funds other than those necessary for their daily living expenses; (b) the petitioner's paying off the bank loans made to Whitehouse did not give rise to debts owed to him, since he was a co-maker of the promissory notes given to the lending bank and hence was primarily liable for the amounts of [fol. 21] the loans; and (c) if valid debts are found to exist, they are non-business debts because they were not incurred in any business of the petitioner.

While it is true, as petitioner admitted in his testimony, that at the time of his advances to the capital of the corporation on behalf of Quinn and Case, they had no substantial funds other than those necessary for their daily living, it does not follow from this that valid debts could not have been created. Although Quinn and Case admittedly had no substantial tangible assets, they were to go to work for Whitehouse and to contribute their experience to the undertaking. Case had been editor of a weekly labor newspaper in Iowa, and Quinn was an experienced union official. It seems to us that the petitioner had good reason to anticipate success for the publishing venture and consequently to expect that he would be repaid by Quinn and Case. Cf. *W. F. Young, Inc.* v. *Commissioner*, (C. A. 1, 1941) 120 F. 2d 159, and cases there cited. More troublesome, however, is the petitioner's later treatment of these debts. In February and July 1947, Quinn and Case each executed an "Assignment, Bill of Sale & Release" by which they transferred outright to the petitioner their shares of stock in Whitehouse in return for his cancellation of their indebtedness to him; in addition the petitioner was to receive promissory notes from Whitehouse in the same amounts as the Quinn and Case notes. It does not appear whether this obligation was ever acknowledged on behalf of White-

house or whether such notes were ever received from the corporation. Despite this attempted substitution of debtors the petitioner was not much better off, since by mid-July 1947 Whitehouse was in poor financial condition. At this time the corporation's only substantial assets were its building and equipment, and it was receiving some income from payments on purchase orders for a publication it had printed. At the same time it had a $13,500 indebtedness on its promissory notes to a bank. In July 1947 Whitehouse sold its building and used most of the proceeds of the sale as payment on one of its promissory note obligations. By this time it was evident that the publishing venture was not successful and that the cor- [fol. 22] poration was insolvent. Therefore, whether Quinn and Case or Whitehouse be considered as the debtor, we are of the opinion that the debts arising out of the petitioner's advances to the capital of Whitehouse on behalf of Quinn and Case became worthless in 1947.

In order to obtain bank loans for Whitehouse it was necessary that petitioner sign promissory notes for the amount of the loans as co-maker with the corporation, and as such he, together with the corporation, was primarily liable on the notes. The petitioner, while acknowledging that he signed the notes as a co-maker, argues that it was understood that Whitehouse was to be primarily responsible for the repayment of the loan, and that he was acting only as a guarantor of the corporation's obligation. Considering that the money loaned was used for the business of the corporation and that the granting of the loan would have been unlikely without the petitioner's signature as co-maker, we think it is reasonable to infer that it was understood that Whitehouse was to be primary obligor on the notes, and that if the petitioner were required to pay, he would be reimbursed by the corporation. In December 1948 the petitioner paid off the two notes that he signed as co-maker with the corporation. Thereupon Whitehouse's obligation to reimburse him came into being, and since the corporation was insolvent, this debt was worthless at its origin. *Shiman* v. *Commissioner*, (C. A. 2, 1932) 60 F. 2d 65. The respondent nevertheless contends that since one of the two notes paid by the petitioner in December, 1948, which

renewed an earlier note of March 27, 1947, was executed by the petitioner and Whitehouse as co-makers on September 27, 1948, when the corporation was hopelessly insolvent and not doing business, although still in existence, the petitioner cannot claim to be a guarantor on this note since at the time he signed there was no possibility of his being reimbursed by the corporation. We see no merit in this argument. The petitioner has established that at the time the original note of March 27, 1947, was signed by him and Whitehouse as co-makers, it was understood [fol. 23] that he was acting as a guarantor. We do not think that the petitioner's signing a renewal note on September 27, 1948, as co-maker with Whitehouse should disturb his guarantor status, since in practical effect the later note created no new obligation but merely extended the time of payment of the original note.

Having decided that the debts owed to the petitioner by Quinn and Case and by Whitehouse were valid debts and that these debts became worthless in 1947 and 1948, there remains the question of the nature of the debts: whether business or non-business. As previously indicated the petitioner contends that his financing clients was a part of his law business, and in support of this argument he testified to various instances in which he loaned money to clients and actively participated in the promotion of their business enterprise. "Business" as used in section 23 (k) (1) and (4) means an occupation to which the taxpayer regularly devotes his time, effort and money in order to earn his livelihood or as a means of acquiring wealth. It does not include isolated transactions, even though they are entered into for profit and are business transactions in the usual sense of the word; nor does it include taking care of one's own investments (*Higgins* v. *Commissioner*, 312 U. S. 212 (1941), rehearing denied, 312 U. S. 714), or carrying on the business of a corporate enterprise (*Commissioner* v. *Smith* (C. A. 2, 1953) 203 F. 2d 310, certiorari denied, 346 U. S. 816 (1953)), no matter how much time is devoted to these activities. In order to meet his burden of proof the petitioner has demonstrated that between 1936 and 1948 he made approximately nine loans to his clients, including the six loans in question here. He also referred to two

other loans but did not specify when they were made. The petitioner mentioned that he bought shares of stock in a few of his corporate clients and that he was asked to invest in a company to manufacture concrete steps. We do not think that this demonstrates a sufficient activity on petitioner's part over a period of twelve years to warrant a finding that he was regularly engaged in financing his clients. Cf. *A Kingsley Ferguson* (1951) 16 T. C. [fol. 24] 1248, (taxpayer's appeal to C. A. 6 dismissed for want of prosecution, December 16, 1952); *Henry E. Sage*, (1950) 15 T. C. 299; Vincent C. Campbell, (1948) 11 T. C. 510. The petitioner devoted a considerable amount of his testimony to describing his work on behalf of his clients, most of which were corporations. Some of the work he described was closely related to his financing activities, but most of it was either the customary services of a lawyer to his client or was the business of the corporate client being carried on by the petitioner.

Accordingly we find that the debts of Quinn and Case, which became worthless in 1947, and the debts of the Whitehouse corporation, which became worthless in 1948, were non-business debts. Having thus characterized these debts, there is no need of our considering the petitioner's alternative arguments.

Decision will be entered for the respondent.

IN THE TAX COURT OF THE UNITED STATES

DECISION—May 13, 1954

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, filed May 12, 1954, it is ORDERED AND DECIDED: That there are deficiencies in income tax of $1,411.16 and $2,121.56 for the years 1947 and 1948, respectively.

IN THE TAX COURT OF THE UNITED STATES

PETITION FOR REVIEW—Filed August 9, 1954

Taxpayers, the Petitioners in the above cause, by Richard E. Williams, counsel, hereby file their Petition for Review by the United States Court of Appeals for the Eighth [fol. 25] Circuit of the decision by the Tax Court of the United States rendered on May 13, 1954, T. C. Memorandum 1954-37, determining deficiencies in the Petitioners' federal income taxes for the calendar years 1947 and 1948 in the respective amounts of $1411.16 and $2121.56, and respectfully show:

I

The Petitioners, Max Putnam and Elizabeth Putnam, are husband and wife, and are individual taxpayers residing in the City of Des Moines, Iowa. The Petitioners filed their joint personal income tax returns for the calendar years 1947 and 1948 with the Collector of Internal Revenue at Des Moines, Iowa, which Collector's office is located within the jurisdiction of the United States Court of Appeals for the Eighth Circuit. This Petition for Review is filed in accordance with Section 1141(b) (1) of the Internal Revenue Code.

II

Nature of the Controversy

The controversy involves the proper determination of the Petitioners' liability for federal income tax for the calendar years 1947 and 1948. Petitioner Max Putnam is and was, during the calendar years 1947 and 1948, an attorney practicing law in the City of Des Moines, Iowa. His clientele was diversified and included manufacturing concerns, insurance companies, professional organizations, partnerships, individuals, and units of organized labor, including Local 441 of a railway workers' union, which Union had, over a period of years, paid very substantial fees to the Petitioner. As attorney for Local 441, Petitioner was required to collaborate with the business agent and directors of the Union, propose and negotiate contracts relating to wages and working conditions, solidify internal strength of the Union, maintain proper relations

between the employer and the Union members, and act as public relations representative of the Union. Petitioner's employment by the Union resulted from his relationships with one Gilbert, business agent for the Union. [fol. 26] In 1945 Gilbert suggested that the petitioner interest himself in the publication of a labor newspaper in Des Moines, Iowa, of the purpose of solidifying internal strength of the Union, developing cooperation between Local 441 and other Unions, and for the betterment of public relations. Gilbert introduced Petitioner to one Meredith Case, editor of the Des Moines Federationist, a weekly labor newspaper, which paper had the endorsement of the local trades and labor assembly, but which was controlled by one Leo Quinn and other Union interests. Quinn was business agent for a large teamsters' local which was affiliated with the international teamsters' union, a branch of the American Federation of Labor.

A corporation was formed for the purpose of publishing local newspapers under the name of Whitehouse Publishing Company. Whitehouse Publishing Company was incorporated on August 17, 1946, and five shares of its capital stock were issued to Petitioner, Max Putnam, a similar amount to Quinn, and a similar amount to Case. Petitioner Putnam transferred to Whitehouse Publishing Company certain real estate and certain sums of cash as consideration for the issuance of said stock. Case and Quinn each agreed to execute, and did execute, to Petitioner Putnam their promissory notes, each equal to one-third of the cost of the real estate and the cash transferred by the Petitioner to Whitehouse Publishing Company. The notes executed by Case and Quinn on November 1, 1946, and on November 13, 1946, aggregated the sum of $8,492.32. All of said notes were secured by the pledge of the stock owned by Case and Quinn in Whitehouse Publishing Company.

On August 20, 1946, and on March 27, 1947, Petitioner Putnam, in order to enable Whitehouse Publishing Company to procure required working funds, guaranteed notes executed by Whitehouse Publishing Company, of Des Moines, Iowa.

During 1947 the debts of Case and Quinn to Petitioner Putnam became worthless. On December 2, 1948, Petitioner

Putnam, out of his own personal funds, paid to Central National Bank and Trust Company the sum of $9,005.21 [fol. 27] in discharge of the balance of principal and interest due to said bank on the notes executed by Whitehouse Publishing Company and guaranteed by Petitioner Putnam. Prior thereto Whitehouse Publishing Company had been fully liquidated, so that on December 2, 1948, it had no assets of any nature or description with which to pay its obligation to Central National Bank and Trust Company, or out of which Petitioner Putnam could recover the amounts paid by him to the bank as guarantor for Whitehouse Publishing Company.

On Petitioners' joint 1947 personal income tax return they claimed as a deduction a business bad debt in the amount of $8,492.32, representing the amount loaned by Petitioner to Case and Quinn.

On their 1948 joint personal income tax return, Petitioners claimed as an ordinary loss the sum of $9,005.21, representing the sum paid by Petitioner to Central National Bank and Trust Company as guarantor for Whitehouse Publishing Company.

The Commissioner of Internal Revenue held that the losses suffered were the consequence of non-business bad debts, and disallowed the deductions claimed on the returns, and determined deficiencies for 1947 and 1948 as aforesaid.

On January 9, 1952, the Commissioner of Internal Revenue mailed Final Notice of Deficiency to Max Putnam and Elizabeth Putnam in connection with his determination of a deficiency in the amount of $1,411.16 for the calendar year 1947, and in connection with his determination of a deficiency in the amount of $2121.56 for the calendar year 1948.

On April 4, 1952, Petitioners filed a petition with the Clerk of the Tax Court of the United States requesting the re-determination of the aforesaid deficiencies. The answer of the Commissioner of Internal Revenue was filed on May 27, 1952.

On September 23, 1953, a hearing was held before the Tax Court of the United States in the court room at the United States Court House in Des Moines, Iowa. On that [fol. 28] same date Petitioner filed an amendment to his petition, to which an answer was filed on October 26, 1953.

On May 12, 1953, the Tax Court of the United States promulgated its memorandum Findings of Fact and Opinion, T. C. Memorandum 1954-37, and on May 13, 1954, the decision of the court was entered.

On June 10, 1954, Petitioners' Motion for Review by the Full Court was denied.

III

The Petitioners, Max Putnam and Elizabeth Putnam, being aggrieved by the Findings of Fact and Conclusions of Law contained in the said Findings and Opinion of the Tax Court, and by its decision entered pursuant thereto, desire to obtain a review thereof by the United States Court of Appeals for the Eighth Circuit.

IV

Assignment of Error

The Petitioners assign as error the following acts and omissions of the Tax Court of the United States:

1. The failure to find that the debts of Case and Quinn to the Petitioner and the losses resulting from the worthlessness of such debts were proximate to and were incurred in Petitioner's business as a practicing attorney.

2. The failure to find that the losses suffered by reason of the worthlessness of the debts of Case and Quinn to Petitioner were business bad debts and deductible as losses under Section 23(k)(1) of the Internal Revenue Code.

3. The failure to find that the debt to Whitehouse Publishing Company to the Petitioner, if a debt existed, resulting from Petitioner's payments to Central National Bank and Trust Company as guarantor for Whitehouse Publishing Company, and the losses resulting from the worthlessness of that debt, were proximate to and incurred in Petitioner's business as a practicing attorney.

[fols. 29-55] 4. The failure to find that the loss resulting from the worthlessness of the debt of Whitehouse Publishing Company to the Petitioner, if a debt existed, was deductible as a business bad debt within and under Section 23(k)(1) of the Internal Revenue Code.

5. The finding that a debt arose in favor of the Petitioner against Whitehouse Publishing Company by reason of Petitioner's payments to Central National Bank and Trust

Company as guarantor on the notes of Whitehouse Publishing Company.

6. The failure to find that the losses resulting from Petitioner's payments to Central National Bank and Trust Company as guarantor on the notes of Whitehouse Publishing Company were losses incurred in Petitioner's business, within the meaning of Section 23(e)(1) of the Internal Revenue Code.

7. The failure to find that the loss resulting from Petitioner's payment to Central National Bank and Trust Company as guarantor for Whitehouse Publishing Company was a loss resulting from a transaction entered into for profit, within the meaning of Section 23(e)(2) of the Internal Revenue Code.

8. The findings of deficiencies for the years 1947 and 1948, in lieu of a determination that there is no income tax due from the Petitioners for any of the years in controversy.

Wherefore, it is respectfully requested that the United States Court of Appeals for the Eighth Circuit reverse and remand the decision of the Tax Court of the United States entered herein on May 13, 1954, with instructions to determine that there is no deficiency for the calendar years 1947 and 1948, and that Petitioners have such other and further relief as the Court may deem proper.

Richard E. Williams, 800 Hubbell Building, Des Moines, Iowa, Counsel for Petitioners.

[fols. 56] UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 15,190

MAX PUTNAM AND ELIZABETH PUTNAM, Petitioners

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Petition to Review Decision of the Tax Court of the United States

OPINION—August 11, 1955

Richard E. Williams for Petitioners.

Dudley J. Godfrey, Jr., Special Assistant to the Attorney General (H. Brian Holland, Assistant Attorney General, and Ellis N. Slack and Joseph F. Goetten, Special Assistants to the Attorney General, were on the brief), for Respondent.

Before Gardner, Chief Judge, and Woodrough and Thomas, Circuit Judges.

[fol. 57] THOMAS, Circuit Judge:

Petitioners, Max Putnam and Elizabeth Putnam, seek a review and reversal of a decision of the Tax Court of the United States entered on May 13, 1954, sustaining the determination of the Commissioner of Internal Revenue that there was a deficiency in their income tax return for the year 1947 in the sum of $1411.16, and for the year 1948 in the sum of $2121.56.

Petitioners contend here, as they did in the Tax Court, that they were entitled in their 1947 return to a deduction of $8492.32 as a business bad debt deduction under § 23(k)(1) of the Internal Revenue Code of 1939; and in their 1948 return to a deduction of $9005.21 under § 23(k)(1), supra, or as a loss resulting from a transaction entered into for profit within the meaning of § 23(e)(2) of the Internal Revenue Code of 1939. Instead the Commissioner determined that the losses sustained in 1947 and 1948 constituted non-business bad debts deductible only as short-term capital losses under § 23(k)(4) of the Internal

Revenue Code. The Tax Court sustained the determination of the Internal Revenue Commissioner, and thereafter petition to review such decision was filed.

The alleged errors of the Tax Court relied on by the petitioners are that:

The court erred in holding that the debts owing petitioner, Max Putnam, which became worthless in 1947 and 1948 were non-business debts, in that (a) the losses resulting from the worthlessness of such debts were proximate to and incurred in petitioner's business as a practicing attorney; (b) that the worthlessness of such debts (if debts existed) was deductible as a loss under said § 23(k)(1); or (c) that the loss suffered by petitioner as guarantor on [fol. 58] the notes he was compelled to pay resulted from a transaction entered into for profit within the meaning of § 23(e)(2) of said Internal Revenue Code.

Petitioners, husband and wife, reside in Des Moines, Iowa. They filed joint income tax returns for the years 1947 and 1948. Since 1931 petitioner, Max Putnam, has been continuously engaged in the practice of law in Des Moines.

The transaction with which we are concerned resulted from the organization of the Whitehouse Publishing Company. In 1944 Putnam became legal counsel for Local 441 of the Railway Workers Union at Des Moines, continuing in that capacity until 1949. Through one Gilbert, business agent of the union, he met Meredith Case, editor of the Des Moines Federationist, a weekly labor newspaper, which had the endorsement of the local trades and labor assembly, but which was controlled by Leo Quinn, business manager of the Local Teamsters' Union, A.F.L., and other union interests.

On August 17, 1946, the Whitehouse Publishing Company was incorporated for the purpose of carrying on a general printing and publishing business. Its capital stock consisted of 15 shares of the par value of $100 each, five shares of which were issued to petitioner, and five shares each to Case and Quinn. While Case and Quinn had a reputation for honesty and integrity, they had no means or cash available to put into the corporation. For himself and on behalf of Case and Quinn, Putnam transferred a lot valued at $1,000 to the corporation, paid $5,500 for the construction

of a building thereon, and made a cash contribution of $1,500 as working capital. He also guaranteed the payment for supplies purchased by Whitehouse and of its employees' salaries.

[fol. 59] Case and Quinn agreed to and did execute to petitioner their promissory notes, each equal to one-third of the cost of the real estate and the building, and of the cash which Putnam had put into the company. In November, 1946, these notes aggregated the sum of $8,492.32 and were secured by pledge of the Whitehouse Publishing Company stock owned by Case and Quinn. Their debts to the petitioner became worthless in 1947. In February, 1947, Case's notes to petitioner were cancelled and his shares of stock in Whitehouse were assigned to petitioner who was to receive promissory notes in like amount from Whitehouse. In July, 1947, Quinn's notes to petitioner were cancelled and his shares of stock in Whitehouse were assigned to Petitioner, who was to receive notes for the same amount from Whitehouse. Nothing in the record indicates whether petitioner ever received such notes from Whitehouse.

On August 20, 1946, petitioner and Whitehouse Publishing Company borrowed $12,075 from the Central National Bank and Trust Company of Des Moines for the use of the corporation and signed a promissory note therefor as co-makers.

Petitioner, on November 13, 1946, borrowed the sum of $3,500 which he made available to the Whitehouse Publishing Company.

In March, 1947, Whitehouse and petitioner borrowed from the bank the further sum of $5,000 and signed a promissory note therefor as co-makers.

This publishing enterprise was not successful. By July, 1947, the publishing company's only assets were its building and equipment. It was receiving some income from payments on orders for a publication it had printed, but at the same time its indebtedness amounted to $13,500. Its [fol. 60] building was sold for $7,000 and it ceased to do business. From the $7,000 thus received $5,000 was used toward paying off the promissory note of August 20, 1946, and $2,000 was turned over to the petitioner for the advances he had made.

In December, 1948, petitioner paid to the bank the bal-

ance of $3,500 due on the note of August 20, 1946, and the $5,000 note of March, 1957, which notes with interest totaled the sum of $9,005.21.

The pertinent statute in determining the issues here is § 23 of the Internal Revenue Code of 1939 (26 U.S.C., 1952 Ed., § 23), which reads as follows:

"Sec. 23. *Deductions from gross income.*

. . . . . .

"(e) *Losses by Individuals.* In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

"(1) if incurred in trade or business; or

"(2) if incurred in any transaction entered into for profit, though not connected with the trade or business; . . .

. . . . . .

"(k) *Bad Debts.*—

"(1) [as amended by Section 124 (a) of the Revenue Act of 1942, and Section 113 of the Revenue Act of 1943] *General rule.*—Debts which become worthless within the taxable year; . . . This paragraph shall not apply in the case of a taxpayer, other than a corporation, with respect to a non-business debt, as defined in paragraph (4) of this subsection.

. . . . . .

[fol. 61] "(4) [As added by Section 124(a) of the Revenue Act of 1942, supra] *Non-business debts.*—In the case of a taxpayer, other than a corporation, if a non-business debt becomes worthless within the taxable year, the loss resulting therefrom shall be considered as a loss from the sale or exchange, during the taxable year, of a capital asset held for not more than 6 months. The term 'non-business debt' means a debt other than a debt evidenced by a security as defined in paragraph (3) and other than a debt the loss from the worthlessness of which is incurred in the taxpayer's trade or business."

In this publishing venture which turned out so unfortunately for the petitioner, Max Putnam, there is no ques-

tion but that he sustained the losses for which he claims deductions in the joint income tax returns of himself and his wife for the years 1947 and 1948.

However, the questions we must answer are whether the losses which he suffered were proximate to and incurred in his business as a practicing attorney and whether the balance of the debt he was compelled to pay to the bank was connected with a transaction entered into for profit, or a "non-business" debt.

Petitioner does not contend that he was in the business of investing in, organizing, and financing business enterprises as such. He was a practicing attorney. He contends that all of his activities connected with various enterprises, including the advances and loans to Case and Quinn, were part of his activities as a lawyer directed toward the betterment of attorney-client relationships and for increasing his clientele.

To show that the loss of $8492.32 resulting from the debts owing him by Case and Quinn were proximate to and incurred in his business as a practicing attorney he calls attention to two cases from the Tax Court: *Fisher Brown*, [fol. 62] *et al. v. Commissioner*, 9 T.C. 1045, and *Hogan v. Commissioner*, 3 T.C. 691; also cited is the case of *Maloney, Collector v. Spencer*, 9 Cir., 172 F. 2d 638. A reading of these cases does not convince us that the situations in them are analogous to the situation here, as petitioner contends. The loans to Case and Quinn were not proximate to or incurred by him as an attorney; they were not essential to his law practice. *Burnet v. Clark*, 287 U.S. 410; *Omaha National Bank v. Commissioner*, 8 Cir., 183 F. 2d 899. His loss from the debts owing him by Case and Quinn was not "attributable to the operation of a trade or business regularly carried on by the taxpayer." *Dalton v. Bowers*, 287 U.S. 404, 409.

In the cases cited, supra, by the petitioner the taxpayers advanced money to or guaranteed loans for businesses which were closely associated with their various business enterprises. For instance, in the *Fisher Brown* case the taxpayer was a wholesale distributor of furniture. He advanced and loaned money to his son-in-law, a manufacturer of furniture. The business failed and taxpayer's loss was treated as a business bad debt under § 23(k)(1) of the

Internal Revenue Code, the Tax Court saying: "We conclude that the petitioner made the advances to Marin as loans for purposes connected with his business as a distributor of furniture . . ." We fail to see the analogy and hold this contention to be without merit.

The facts here bear a striking similarity to the facts in the case of *Omaha National Bank* v. *Commissioner*, 8 Cir., 183 F. 2d 899. There L. R. Crofoot, deceased before the case reached the appellate court, and for whose estate the bank was special administrator, was a practicing attorney in Omaha, Nebraska, during all the period involved. In order to protect loans he had made to one Rosso, a restau-
[fol. 63] rant and tavern operator, the business was incorporated with a capital stock of $40,000, and finally the taxpayer owned 333 shares of the stock for which he had paid $33,450. From its inception the business did not prosper, and finally the corporate assets, including the building, were sold for $15,000. After the distribution of the assets there was still owing the taxpayer on money loaned to the corporation the sum of $10,407.90, which he claimed as a business bad debt. The Tax Court held that his losses were not suffered in his "trade or business"; that the petitioner was not engaged in the restaurant business, which was conducted by a corporation; and that it was not his individual business. One of the principal cases relied on by the Tax Court was that of *Burnet* v. *Clark*, 287 U.S. 410, wherein it was said: "The unfortunate endorsements were no part of his ordinary business but were occasional transactions intended to preserve the value of his investment in capital shares." This court affirmed, holding that the loss suffered by the taxpayer was not incurred "in his trade or business." See, also, *Nicholson* v. *Commissioner*, 10 Cir., 218 F. 2d 840; *Chicago Title & Trust Co.* v. *United States*, 7 Cir., 209 F. 2d 773; *Commissioner* v. *Smith*, 2 Cir., 203 F. 2d 310, cert. den., 346 U.S. 816. The loans advanced to Case and Quinn were not business bad debts allowable as deductions under § 23(k)(1), but the loss of the $8292.32 which taxpayer sustained in 1947 constituted a non-business bad debt deductible only as a short-term capital loss under § 23(k)(4) of the Internal Revenue Code of 1939.

Finally we consider whether the losses of petitioner resulted from a transaction entered into for profit within the

meaning of § 23(e)(2), "though not connected with the trade or business."

We have already considered that the loans made to Case and Quinn resulting in the loss of $8492.32 were non-busi-[fol. 64] ness bad debts deductible as short-term capital losses. These loans cannot be considered as transactions entered into for profit within the meaning of § 23(e)(2). Only if the publishing venture had proved successful would there have been any chance to be reimbursed by Case and Quinn. At no time had they anything of value from which reimbursement could be had. Petitioner admits they were "judgment-proof."

We next consider whether the loss which resulted in 1948 comes under § 23(e)(2). In December, 1948, taxpayer was compelled to pay to the bank the sum of $9005.21. The amount represented the balance of $3500 due on the $12,075 note of August 20, 1946, and the $5000 note executed in March, 1947, both of which notes petitioner signed as co-maker with the Whitehouse Publishing Company.

Very little discussion is needed on this point. It is true that in the case of *Cudlip* v. *Commissioner*, 6 Cir., 220 F. 2d 565, that court reversed the decision of the Tax Court. Cudlip was an attorney, and his law practice had to do principally with banks, corporations and business ventures. He became interested in WiRecorder Corporation, and in 1947 with two others he became a guarantor on the corporation's note for $90,000. The corporation was not successful and on November 23, 1949, notified the bank that it was unable to meet its obligation upon the note. Whereupon, in accordance with his guaranty agreement, Cudlip paid the bank on November 25, 1949, $30,000 plus $200 of interest due on the note. The other guarantors likewise paid $30,000 each on the note. The corporation was insolvent; its corporate existence terminated on December 13, 1949; and petitioner Cudlip never recovered anything from the corporation. The Sixth Circuit, reversing the decision of the Tax Court, stated that the loss incurred [fol. 65] resulted from a transaction entered into for profit under § 23(e)(2). In its opinion the court said that "Taxation is concerned with realities, and . . . the contentions here advanced by the Commissioner are completely unrealistic," and remanded the case for allowance of the

claimed deduction under § 23(e)(2), relying particularly upon *Pollak* v. *Commissioner*, 3 Cir., 208 F. 2d 57, 58, and *Allen* v. *Edwards*, D.C. Ga., 114 F. Supp. 672, 674 (affirmed by the Fifth Circuit in *Edwards* v. *Allen*, 216 F. 2d 794). In a vigorous dissenting opinion, Judge Stewart stated:

"Yet, until the *Pollak* and *Allen* cases, and today's decision in this case, the debt so arising has consistently been considered nonetheless deductible as a bad debt, although it became worthless immediately upon its ripening from a secondary obligation into a debt." Citing cases.

Considerable diversity of opinion exists among the different circuits as to deductions from gross income under § 23 of the Internal Revenue Code. We find no case in the Supreme Court overruling its decision as to a non-business bad debt loss since the publication of its decision in *Burnet* v. *Clark*, 287 U.S. 410. In spite of the recent opinion of the Sixth Circuit in the *Cudlip* case, supra, the great weight of authority is that a transaction such as that of Whitehouse Publishing Company and petitioner with the bank, wherein petitioner was compelled, as co-maker or guarantor, to pay the balance due on the notes to the bank in the sum of $8,065.21, including interest, is a non-business bad debt deductible as a short-term capital loss under §23(k)(4), and that such loss does not come under the provisions of § 23(e)(2) where deduction is allowable "if incurred in any transaction entered into for profit, though not connected with the trade or business." See and compare [fol. 66] *Burnet* v. *Clark*, 287 U.S. 410; *Commissioner* v. *Smith*, 2 Cir., 203 F. 2d 610; *W. F. Young, Inc.* v. *Commissioner*, 1 Cir., 120 F. 2d 159.

The decision of the Tax Court as to a deficiency in the petitioners' income tax returns for 1947 and 1948 in the sums of $1411.16 and $2121.56, respectively, is, therefore,

Affirmed.

[fol. 67] UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MAX PUTNAM AND ELIZABETH PUTNAM, petitioners

vs.

COMMISSIONER OF INTERNAL REVENUE.

JUDGMENT—August 11, 1955

Petition to Review Decision of the Tax Court of the United States.

This cause came on to be heard on the Petition to review a decision of The Tax Court of the United States entered May 13, 1954, determining that there were deficiencies in the income tax returns of the petitioners for the years 1947 and 1948, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the decision of the said Tax Court in this matter be, and the same is hereby, affirmed.

And it is further Ordered by this Court that the petition to review in this matter be, and the same is hereby, dismissed.

August 11, 1955.

[fol. 68] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 69] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner(s),

It is ordered that the time for filing petition for writ of certiorari in the above-named cause be, and the same is hereby, extended to and including Jan. 7th, 1956.

Tom C. Clark, Associate Justice of the Supreme Court of the United States.

Dated this 9th day of November, 1955.

[fol. 70] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed February 27, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.